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AGREEMENT TO AMEND AGREEMENT
FOR
ENGINEERING SERVICES

THIS AGREEMENT, made this 20th day of DECEMBER, 1977, by and between HAMILTON TOWNSHIP MUNICIPAL AUTHORITY, hereinafter referred to as the OWNER, and ARROWOOD, INCORPORATED, hereinafter referred to as the ENGINEER:

WITNESSETH:

WHEREAS, the OWNER and the ENGINEER entered into an Agreement dated October 22, 1971, providing for certain engineering services and fees related thereto, and

WHEREAS, it is mutually agreeable by both parties to amend Sections B-2 of the Agreement relating to Compensation for Basic Engineering Services and,

WHEREAS, an Amendment to the Engineering Services Agreement was executed by the OWNER and the ENGINEER on October 22, 1976, to include certain requirements of the United States Environmental Protection Agency (the E.P.A.); and

WHEREAS, in order to comply with Grant Requirements of the United States Environmental Protection Agency [40 CFR Part 35 Subpart E (41 FR 9340)] it is mutually agreeable by both parties to amend the appropriate portions of the October 22, 1971 Agreement and the October 22, 1976 Amendment to comply further therewith,

That for and in consideration of the mutual covenants and promises between the two parties hereto, it is hereby agreed to amend the October 22, 1971 Agreement as follows:

I. Section B - Compensation for Basic Engineering Services.

Section B-2 be amended to read as follows: A sum together with the specific sum set forth in Section B-1 above equals fifty seven and seven tenths percent (57.7%) of the total compensation based on the revised cost estimate after completion and submission of the preliminary plans, specifications, and revised cost estimates, and the Contract Documents, and the acceptance of the same by the OWNER and the United States Environmental Protection Agency. This sum shall be due on December 31, 1977.

Section B-3 be amended to read as follows: A sum equal to twenty two and three tenths percent (22.3%) of the total compensation based on construction contract costs immediately after the construction contracts are awarded.

II. Section D - Additional Engineering Services.

Section D be amended as follows: The payment for services specified in this Section D shall be in accordance with the schedule set out in Section E in the original contract from the date of the original contract to December 31, 1975. The payment for services specified in this Section D rendered after January 1, 1976, shall be in accordance with the amended Section E contained herein. The ENGINEER will render to OWNER an itemized bill for such services

Section E - Schedule of Rates and Charges for Additional Engineering Services

<u>Personnel</u>	<u>Rate per Hour</u>
<u>Survey</u>	
Four-Man Party	\$ 40.10
Three-Man Party	33.55
Two-Man Party	24.75
<u>Construction Inspection</u>	
Resident Engineer	\$ 27.50
Resident Inspector	16.00
<u>Engineering and General Supervision</u>	
Principal or Officer of Firm	\$ 27.50
Project Engineer	22.75
Field or Design Engineer	22.25
Field or Office Assistant	16.00
Land Surveyor	20.00
Draftsman	16.00
Secretary I	6.00
Secretary II	11.50
<u>Legal Appearance in Court</u>	
Full Day	\$250.00
Half Day	125.00

III. The inclusion of Appendix C-1 as appears in the Federal Register, Vol. 41, No. 251 - Wednesday, December 29, 1976, which is as follows:

1. GENERAL

(a) the OWNER and the ENGINEER agree that the following provisions shall apply to the E.P.A. grant-eligible work to be performed under this Agreement and that such provisions shall supersede any conflicting provisions of this Agreement.

(b) the work under this Agreement is funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor the United States Environmental Protection Agency (hereinafter, "E.P.A.") is a party to this Agreement. This Agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this Agreement. As used in these clauses, the words "the date of execution of this Agreement" mean the date of execution of this Agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(c) The rights and remedies of the OWNER provided for in these clauses are in addition to any other rights and remedies provided by law and

2. RESPONSIBILITY OF THE ENGINEER

(a) The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(b) The ENGINEER shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with the Agreement and applicable EPA requirements in effect on the date of execution of this Agreement.

(c) Approval by the OWNER or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of his work. Neither the OWNER'S nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(d) The ENGINEER shall be and remain liable in accordance with applicable law for all damages to the OWNER or EPA caused by the ENGINEER'S negligent performance of any of the services furnished under this Agreement, except for errors, omissions or other deficiencies to the extent attributable to the OWNER, OWNER-furnished data or any third party. The ENGINEER shall not be responsible for any time delays in the project caused by circumstances beyond the ENGINEER'S control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the ENGINEER and are utilized, the ENGINEER shall be liable only for gross negligence to the extent of such utilization.

3. SCOPE OF WORK

The services to be rendered by the ENGINEER shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this Agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. CHANGES

(a) the OWNER may, at any time, by written order, make changes within the general scope of this Agreement in the services or work to be performed. If such changes cause an increase or decrease in the ENGINEER'S cost of, or time required for, performance of any services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Any claim of the ENGINEER for adjustment under this clause

(c) In the event that there is a modification of EPA requirements relating to the services to be performed under this Agreement subsequent to the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement shall be reflected in an appropriate modification of this Agreement.

5. TERMINATION

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party: Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This Agreement may be terminated in whole or in part in writing by the OWNER for its convenience: Provided, That such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the ENGINEER is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the OWNER, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the OWNER by reason of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for service or other work performed. The equitable adjustment for any termination shall provide for payment to the ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the ENGINEER shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement, whether completed or in process.

(e) Upon termination pursuant to paragraphs (a) or (b) above, the OWNER may take over the work and prosecute the same to completion by Agreement with another party or otherwise. Any work taken over by the OWNER for completion will be completed at the OWNER'S risk, and the OWNER will hold harmless the ENGINEER from all claims and damages arising out of

6. REMEDIES

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between the OWNER and the ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

7. PAYMENT

(a) Payment shall be made in accordance with the payment schedule incorporated in this Agreement as soon as practicable upon submission of statements requesting payment by the ENGINEER to the OWNER. If no such payment schedule is incorporated in this Agreement, the payment provisions of paragraph (b) of this clause shall apply.

(b) Monthly progress payments may be requested by the ENGINEER and shall be made by the OWNER to the ENGINEER as soon as practicable upon submission of statements requesting payment by the ENGINEER to the OWNER. When such progress payments are made, the OWNER may withhold up to ten percent of the vouchered amount until satisfactory completion by the ENGINEER of work and services within a Step called for under this Agreement. When the OWNER determines that the work under this Agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the OWNER, he shall release to the ENGINEER such excess amount.

(c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the ENGINEER under this Agreement, which estimates shall be prepared by the ENGINEER and supplemented or accompanied by such supporting data as may be required by the OWNER.

(d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this Agreement for such work, or prior settlement upon termination of the Agreement, and as a condition precedent thereto, the ENGINEER shall execute and deliver to the OWNER a release of all claims against the OWNER arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the ENGINEER from the operation of the release in stated amounts to be set forth therein.

8. PROJECT DESIGN

(a) In the performance of this Agreement, the ENGINEER shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this Agreement, except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect on the date of execution of this Agreement.

(c) The ENGINEER shall not, in the performance of the work called for by this Agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a) (6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal". With regard to materials, if a single material is specified, the ENGINEER must be prepared to substantiate the basis for the selection of the material.

(d) The ENGINEER shall report to the OWNER any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

(e) The ENGINEER shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. AUDIT: ACCESS TO RECORDS

(a) The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this Agreement and a copy of the cost summary submitted to the OWNER. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, OWNER, and [the State water pollution control agency] or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ENGINEER will provide proper facilities for such access and inspection.

(b) The ENGINEER agrees to include paragraphs (a) through (e) of this clause in all his contracts and all tier subcontracts directly related to project performance which are in excess of \$10,000.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The ENGINEER agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the ENGINEER is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the ENGINEER.

In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) If the OWNER or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this Agreement was increased by any significant sums because the ENGINEER or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in this certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the Agreement shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the Remedies clause of this Agreement.

11. SUBCONTRACTS

(a) Any subcontractors and outside associates or consultants required by the ENGINEER in connection with the services covered by this Agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the OWNER during the performance of this Agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the OWNER.

(b) The ENGINEER may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the OWNER.

12. LABOR STANDARDS

To the extent that this Agreement involves "construction" (as defined by the Secretary of Labor), the ENGINEER agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and relevant orders of the Secretary of Labor or EPA; and the ENGINEER further agrees that this Agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this Agreement.

13. EQUAL EMPLOYMENT OPPORTUNITY

In accordance with EPA policy as expressed in 40 CFR 30.420-5, the

14. UTILIZATION OF SMALL AND MINORITY BUSINESS

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the ENGINEER agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. COVENANT AGAINST CONTINGENT FEES

The ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty the OWNER shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. GRATUITIES

(a) If it is found, after notice and hearing, by the OWNER that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the ENGINEER, or any agent or representative of the ENGINEER, to any official, employee or agent of the OWNER, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate the right of the ENGINEER to proceed under this Agreement or may pursue such other rights and remedies provided by law or under this Agreement: Provided, That the existence of the facts upon which the OWNER makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this Agreement.

(b) In the event this Agreement is terminated as provided in paragraph (a) hereof, the OWNER shall be entitled (1) to pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the contract by the ENGINEER, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the OWNER) which shall not be less than three nor more than ten times the costs incurred by the ENGINEER in providing any such gratuities to any such officer or employee.

17. PATENTS

If this Agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this Agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this Agreement, including Appendix B of said Part 30. In such case, the ENGINEER shall report the discovery or invention to EPA directly or through the OWNER, and shall otherwise comply with the OWNER'S responsibilities in accordance with said Subpart D of 40 CFR Part 30. The ENGINEER hereby agrees that the disposition of rights to inventions made under this Agreement shall

18. COPYRIGHTS AND RIGHTS IN DATA


(a) the ENGINEER agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with E.P.A. grant funds), technical reports, operating manuals, and other work submitted with a Step 1 Facilities Plan or with a Step 2 or Step 3 grant application or which are specified to be delivered under this Agreement or which are developed or produced and paid for under this Agreement (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this Agreement, including the right to use, duplicate and disclose, such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the ENGINEER. If the material is copyrightable, the ENGINEER may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the OWNER and the Federal Government reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish and use such materials, in whole or in part, and to authorize others to do so. The ENGINEER shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable Subject Data.

(b) All such Subject Data furnished by the ENGINEER pursuant to this Agreement are instruments of his services in respect of the project. It is understood that the ENGINEER does not represent such Subject Data to be suitable for reuse on any other project or for any other purpose. Any reuse by the OWNER without specific written verification or adaption by the ENGINEER will be at the risk of the OWNER and without liability to the ENGINEER. Any such verification of adaptation will entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective date hereinbefore set forth.

OWNER:
HAMILTON TOWNSHIP MUNICIPAL AUTHORITY

ATTEST:


Garret B. Lee Sec

By:

Harry B. [Signature]
Chairman